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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA

5 v.

10 CR 709 (GBD)

6 ISAIAK KHAFIZOV,

7 Defendant.  
-----x

8 New York, N.Y.  
9 March 19, 2014  
10 2:07 p.m.

11 Before:

12 HON. GEORGE B. DANIELS

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

18 BY: NIKETH V. VELAMOOR  
19 NICOLE W. FRIEDLANDER  
20 Assistant United States Attorneys

21 JAMES KOUSOUROS

22 TONY MIRVIS

23 JEREMY SCHOLEM

24 DEBRA KOUSOUROS

25 Attorneys for Defendant

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1 (Case called)

2 MR. VELAMOOR: Good afternoon, your Honor. Nick  
3 Velamoor and Nicole Friedlander for the government.

4 THE COURT: Good afternoon.

5 MS. FRIEDLANDER: Good afternoon.

6 MR. KOUSOUROS: Good afternoon, sir. James Kousouris.  
7 I represent Mr. Khafizov.

8 THE COURT: Good afternoon, Mr. Kousouris.

9 MR. MIRVIS: Good afternoon, your Honor. Tony Mirvis  
10 also on behalf of Mr. Khafizov.

11 THE COURT: Good afternoon.

12 MR. KOUSOUROS: Judge, we're also joined by part of my  
13 office, Ms. Kousouris is here and Jeremy Scholem is here.

14 MS. KOUSOUROS: Good afternoon, your Honor.

15 MR. SCHOLEM: Good afternoon, your Honor.

16 THE COURT: Mr. Kousouris, let me start with you.

17 Have you received a copy of the presentence report and had and  
18 opportunity to review it with your client?

19 MR. KOUSOUROS: Yes.

20 THE COURT: Before I address the guideline range as  
21 calculated, do you have any other corrections or objections  
22 that you are making to the report itself?

23 MR. KOUSOUROS: No, your Honor, just those which we've  
24 detailed in our submissions.

25 THE COURT: Then let me first start with, the last

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1 letter I received indicated, although I don't think I got an  
2 acknowledgment by the government on that, the defense letter,  
3 indicating that the government is not seeking certain  
4 enhancements to the guideline. Let me first see if we can  
5 resolve those and see how that affects the guideline range.

6 I think I was told that the government was no longer  
7 seeking two points for misrepresentation that the defendant was  
8 acting on behalf of a government agency, the 2B1.1(b)(9)(A); is  
9 that correct?

10 MR. VELAMOOR: Yes, your Honor. We addressed that,  
11 and I hope the Court received our sentencing memorandum.

12 THE COURT: Let's make sure I did. I have the  
13 government's sentencing memorandum. Let me make sure the  
14 sequence of events. The sentencing memorandum, no, I don't  
15 think I do have it. When did you submit it?

16 MR. VELAMOOR: We dropped that off to chambers, I  
17 believe, a week ago. Last Monday we dropped it off, along with  
18 two volumes and an appendix.

19 THE COURT: Oh, yes. Yes, I do have that, but I don't  
20 remember that those issues were addressed in there.

21 MR. VELAMOOR: They were not addressed in any detail;  
22 so perhaps that's why, but we did indicate -- so to answer your  
23 Honor's question, yes, we are not contesting the objection to  
24 that enhancement.

25 THE COURT: Because the most recent thing I received

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1 was the March 17th letter from Mr. Kousouris that indicated  
2 that you were not seeking that enhancement, and so I haven't  
3 heard from the government since then.

4 MR. VELAMOOR: We previewed in our submission that we  
5 would not be contesting that, and we continue to not be  
6 contesting it.

7 THE COURT: So that would have been a two-point  
8 enhancement, which would no longer apply.

9 Now, what about, it was also represented that the  
10 government was not seeking abuse of a position of trust.

11 MR. VELAMOOR: That's also correct. As we wrote, we  
12 are also not contesting that enhancement.

13 THE COURT: All right. So let me address the two  
14 primary -- in my view, the two primary issues that I think  
15 might warrant some adjustment, and then we can address the  
16 others. The government was seeking a loss amount in excess of  
17 \$400,000 and less than \$1 million, and 250 or more victims.  
18 And, basically, the argument to that was the amount of revenue  
19 generated or received by Mr. Khafizov and his entity and the  
20 number of clients.

21 What I remember, and from the government's submission,  
22 is that -- and what I find much more compelling, unless the  
23 government, and I'll let the government be heard further, is  
24 that the government represented that the government  
25 specifically had identified more than 80 victims, who variously

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1 testified, had been interviewed by the government, or had  
2 submitted personal statements regarding the impact of the  
3 defendant's fraud on their lives.

4 And the government also represented that the  
5 government has identified actual losses suffered by the more  
6 than 80 trial witnesses and other victims who have made  
7 statements in this case, of approximately \$230,000. Those are  
8 the actual numbers that were attributed to victims and loss  
9 attributed to those victims.

10 It seems to me that that would be the appropriate  
11 number to use, and I'll hear the government further, if they  
12 wish to press this further. But from my calculation, that  
13 would be a 12-point enhancement for \$200,000 or more, but less  
14 than 400,000; and a 80-victim enhancement, I think it is an  
15 80-victim enhancement, of four points instead of six points.

16 I mean, I think that that doesn't seem, at least to  
17 that extent, doesn't seem to be significantly in dispute on  
18 this record, but I'll hear from the government as to whether or  
19 not you believe that you could sustain a record that would  
20 warrant a higher enhancement, or whether it's worth doing that,  
21 and hear from Mr. Kousouros as to why he says, if he has any  
22 arguments based on those representations, that those numbers  
23 should be any less. Yes?

24 MR. VELAMOOR: We absolutely believe that the victim  
25 number should be 250 or more and that the loss should be more

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1 than 400,000, and so I'll explain why. You know, first of all,  
2 we have -- I want to take issue a little bit with how the Court  
3 described the evidence with more than 80 and more than 400,000.  
4 We're not simply relying on the revenues to the business, nor  
5 are we simply relying on people who were clients of the  
6 business.

7 We have identified more than 250 people who actually  
8 paid money to the defendant or his business, and we've  
9 identified the specific amounts of money they paid, and so  
10 these are people who paid different amounts of money. We've  
11 listed, you know, in our spreadsheet the exact amounts that  
12 each one of those people paid. And we totaled that up, and you  
13 get a number well in excess of 700,000; so this is not -- we're  
14 not just simply estimating or guessing or speculating based on  
15 the revenue of the business. These are actual payments by  
16 victims.

17 THE COURT: Well, what I didn't have that went along  
18 with that is whether or not any of these people did or did not  
19 receive any services that led to or didn't lead to any  
20 modification of their mortgage.

21 MR. VELAMOOR: Well, so let me address that in  
22 specific ways. First of all, we have -- firstly, I don't  
23 believe that's actually, frankly, relevant. Whether these  
24 people got a modification or not is not relevant. This was, as  
25 the Court pointed out at trial, as the Court instructed the

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1         jury at trial, this was a fraud in the inducement.

2                 The fraud was lying to these people to get them to pay  
3         their money to AHR. Whatever happened after that, however much  
4         work was done after that, whether they got modifications after  
5         that is irrelevant. That's what the law says. We cited cases  
6         in our submission that support the fact that when you take  
7         someone's money by lying to them, you can't make it better  
8         after the fact by providing services to them. So on the first  
9         fact, you know, whether or not they got modifications, I think,  
10         is just a distraction. It's irrelevant. It doesn't really  
11         matter.

12                 Now, beyond that, on the facts, there's, frankly, no  
13         reason to believe that many of these -- any real number of  
14         these people got any modification. There was testimony about  
15         that at trial, that virtually none of the people got any  
16         modifications. They certainly didn't get them within the time  
17         frames that they would get them. So there's virtually no  
18         evidence that any substantial number of people got  
19         modifications from the defendant.

20                 On the contrary, there is evidence, substantial  
21         evidence from the trial, that those people who decided to part  
22         with their money and give it to AHR, did so based on fraudulent  
23         statements. They were induced through fraud. There's a lot of  
24         evidence in the record about that. First of all, there was,  
25         for example, the fact that customers were brought in through a

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1 mass mailer. That mass mailer contained false statements.  
2 This is not a one-off strategy that particular loan officers  
3 were using. This was a mailer that everyone was. It was sent  
4 out to many, many people, and many people responded to that.

5 There was also evidence at trial that scripts were  
6 given to the callers at AHR, and those scripts contained  
7 numerous false statements, false statements about the  
8 modification being guaranteed, false statements about the  
9 modification coming in between 30 and 60 days or maybe 90 days,  
10 false statements about whether refunds were guaranteed.

11 There's testimony, there's evidence that Mr. Khafizov  
12 approved these scripts, made the statements himself. Again,  
13 this is not one off-things that particular people were saying.  
14 This was the practice of the company that was set forth in  
15 scripts that people were supposed to follow, and it all  
16 contained lies.

17 So beyond that, you know, frankly, there's very little  
18 reason to believe -- well, let me add to that that there's  
19 direct testimony from witnesses at trial that American Home  
20 Recovery was not even the first loan modification business. It  
21 was the next-generation loan modification business after  
22 Benjamin Modification Agency. Benjamin Modification Agency,  
23 the defendant was a principal of that company. That company  
24 was also a fraud. It was a failure.

25 We didn't consider any of those people as victims, but

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1 the crucial part is when they opened up AHR, they knew that  
2 everyone they continued to tell the same false statements they  
3 had been telling to Benjamin Modification's clients, could not  
4 be true, but they continued to tell them anyway, and those were  
5 lies. So we have every reason to believe that the only way  
6 they got business was by lying to people.

7 We spoke to 80 people. We provided the Court  
8 memorandums from all the interviews. We didn't hold any of  
9 them back. You can tell from reading them that they were all  
10 lied to in order to get them to part with their money, and so I  
11 don't think it's difficult, or I don't think it's much of a  
12 leap for the Court to estimate, which is all you need to do is  
13 estimate, when you have a universe of hundreds and hundreds of  
14 additional clients that we've identified, when you have bank  
15 records confirming their payments that, you know, a little over  
16 170 of these three, 400 additional people were lied to in order  
17 to get them to pay their money.

18 THE COURT: I wasn't quite sure.

19 MR. VELAMOOR: Let me -- Sorry.

20 THE COURT: I wasn't quite sure. There were a number  
21 of individuals identified as victims where there's no loss  
22 amount. How do you explain that, and what do you want me to  
23 conclude from that?

24 MR. VELAMOOR: Well, let me just say, first of all,  
25 that you don't need to consider any one of those people as a

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1 victim in order to have at least approximately 300 victims  
2 because, as we set forth in our papers, we've identified 300  
3 people who were either interviewed or for whom we have  
4 identified bank records showing that they specifically  
5 personally paid money to AHR.

6 So the people who we have not attributed a loss  
7 amount, those people are people who we identified through the  
8 ACT database, which was the defendant's company's database of  
9 customers. Those provided an additional universe of more than,  
10 you know, 200 more, or at least 200, possibly more, possible  
11 victims. And the Court, frankly, does not need to find any  
12 single one of them to be a victim in order to meet the  
13 threshold the government is seeking.

14 I think it's, frankly, hard to believe that at least  
15 some of them and, frankly, probably most of them, were also  
16 victims. It's impossible to believe that the defendant's  
17 company would have provided services to anyone without taking  
18 money upfront. That was a practice of the business. So in  
19 order to provide an additional cushion for the Court in making  
20 an estimate, which is all it needs to do, is make an estimate,  
21 those additional 200 victims provide even more cushion to take  
22 us even farther above the 250-victim threshold that we're  
23 already at.

24 In terms of the losses, on the loss side of things,  
25 again, we're not relying on a single dollar from those people

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1 to get way past 400,000. We're at 750-some-thousand just based  
2 on victim interviews and bank records. We've attributed zero  
3 amounts to all these people who were just identified through  
4 ACTS. Again, I find it impossible to believe that these people  
5 didn't pay money because AHR was not in the business of  
6 providing services for free.

7 But, again, the Court doesn't need to count on a  
8 single dollar from any of those additional hundreds of victims  
9 in order to find at least 400,000 victims in this case.

10 Also, on the whole issue, and the last point I'll make  
11 about, getting modifications, again, I want to stress I don't  
12 think that's relevant. I think the law is very clear. If  
13 you're induced to part with your money through fraud, you're a  
14 victim, and these people were induced to part with their money  
15 through fraud. But another important fact we learned at the  
16 trial is where the defendant managed to get any success in  
17 getting progress from banks, he generally, in many cases, did  
18 that through additional fraud, through fraud on lenders,  
19 through by creating false assets or false income.

20 So, you know, even if the Court were to believe that  
21 that customer was not a victim, and I think it's very important  
22 that they were, he made the bank a victim in those particular  
23 cases, you know, whether the customer is a victim or not and,  
24 again, the customer certainly is. And, frankly, this is an  
25 allegation that I'm just not making here. This is a finding

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1 that the jury made when they convicted the defendant, not only  
2 defrauding customers but also defrauding lenders. So this is  
3 something that the government's proven not just beyond a  
4 preponderance of evidence but also beyond a reasonable doubt.

5 THE COURT: What is the dollar amount that you  
6 actually have computed?

7 MR. VELAMOOR: This is what we've done, essentially, I  
8 want to make sure I'm explaining what we've done. We  
9 interviewed, our office interviewed more than 80 people.  
10 We've, you know, figured out -- found out from them what their  
11 losses were. In many cases we corroborated what they told us  
12 through bank records. Where there was any small discrepancy,  
13 we always took the lower number. From those 80 people, we  
14 found more than \$230,000 in losses.

15 Then we went through the bank records for American  
16 Home Recovery and for the defendant's company, IF Management  
17 and Consulting. What we did not do is simply take a total of  
18 all the money that went into those accounts. We did not do  
19 that. We went through each check. We looked at only checks  
20 that came from individuals. In many cases, or most, if not  
21 all, cases individuals who were also found in the ACT database;  
22 so that proved that they were clients of the company, and we  
23 added the specific dollar amount that those particular people  
24 paid to the defendant.

25 So we're not just taking the revenues of the company.

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1 We're getting payments from people who we believe, and who the  
2 evidence shows are customers, and we're totaling those payments  
3 as well. And when you total those payments, in addition to the  
4 230,000, you have -- the total of those goes all the way over  
5 700,000. You get approximately \$715,000; so that's, you know,  
6 almost \$400,000 more loss specifically attributable to  
7 particular victims.

8 Again, we've broken it out in our chart per victim,  
9 and so we now have actual losses, not a projection, not an  
10 estimate, actual losses of well over \$700,000. From this  
11 evidence, we think that the only reasonable estimation of loss,  
12 based on the evidence, is a loss well in excess of \$400,000.

13 THE COURT: Well, what is the number of victims that  
14 corresponds to the dollar amount that you have set?

15 MR. VELAMOOR: The number of victims who correspond to  
16 the dollar amount, okay, so the \$715,000 in losses corresponds  
17 to approximately 300 victims. Approximately 80 -- more than 80  
18 who were interviewed, plus an additionally approximately almost  
19 200, around 200 more, gets you to about 300 people who we have  
20 identified bank records. So the 705,000 corresponds to only  
21 about 300 victims, which frankly, is consistent also with the  
22 evidence that we had at trial, where the standard payment was  
23 around two-or-so-thousand dollars, but the defendant managed to  
24 hit certain victims up for even more and that accounts for the  
25 additional.

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1                   THE COURT: So you're going with the approximately 300  
2 victim number?

3                   MR. VELAMOOR: We think that, you know, at least  
4 approximately 300, and then we have an additional, as I pointed  
5 out, universe of almost 200 people who, again, we haven't found  
6 a specific payment, but we've identified them in the ACT  
7 database. If the Court wants a little bit more cushion, all it  
8 needs to conclude is some small fraction of those people were  
9 also victims, and then you're well above 300.

10                  But, yes, I think the most conservative estimate of  
11 victims is around the 300 people who made payments,  
12 corroborated by bank records and people who have been  
13 interviewed or provided statements to the Court.

14                  THE COURT: And you say the amount of money in  
15 payments, what did you use to accumulate the payment amount?

16                  MR. VELAMOOR: What we did for the payment amounts  
17 was, in the case of interviews, what people told us, and in  
18 many cases, if not most cases, corroborated by bank records or  
19 records that the witnesses gave us, plus again, going through  
20 the bank records.

21                  THE COURT: Which bank records?

22                  MR. VELAMOOR: Bank records for AHR, American Home  
23 Recovery and bank records for the defendant's company, IF  
24 Management and Consulting. And going through the checks, you  
25 know, one by one saying here's a check from Hector Ironez for

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1 \$1,995. We have a bank record that confirms that Mr. Ironez  
2 paid AHR or IF Management \$1,995. So we add it to the list.

3 THE COURT: And is there any way that you identified  
4 that that was, in fact, a payment from a customer?

5 MR. VELAMOOR: Well, first of all -- Well, the fact  
6 that that person was a customer?

7 THE COURT: Yes.

8 MR. VELAMOOR: Most, if not all, of these cases we  
9 double checked it with the ACT database to show that that there  
10 was also a record for this person in the ACT database. Some  
11 cases we weren't able to do that, in part, because of the  
12 evidence established at trial. The defendant freelanced, in  
13 many ways, and continued on his own under the IF Management  
14 name; so they didn't always appear in the ACT database.

15 But there's also, frankly, no other explanation  
16 because these are not businesses that are paying money to AHR.  
17 There's no other reason why anyone would be paying amounts that  
18 are entirely consistent with the fees that AHR was charging.  
19 There's, frankly, no other reason why these people would be  
20 paying money to AHR, other than for services rendered. This  
21 was a simple business. The business was to supposedly provide  
22 loan modifications for individuals. The money coming in from  
23 individuals, I think, can very fairly be inferred to be  
24 payments from customers and customers who were, frankly,  
25 victims.

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1                   THE COURT: And you went from what period of time?

2                   MR. VELAMOOR: For the bank records?

3                   THE COURT: Yes.

4                   MR. VELAMOOR: The bank records, for essentially the  
5 life of the business; so, you know, 2008, perhaps into 2009.

6                   THE COURT: When you say the life of the business,  
7 what --

8                   MR. VELAMOOR: American Home Recovery and IF  
9 Management Consulting for the time period that the defendant  
10 was using that bank account. Again, the defendant was charged  
11 with conspiracy. The time periods we relied on are within the  
12 scope of the conspiracy in the charges.

13                  THE COURT: Mr. Kousouros?

14                  MR. KOUSOUROS: If it please the Court, good  
15 afternoon, Judge. Judge, I think that your original  
16 inclination was correct. In our memorandum, we -- in our  
17 initial memorandum, we had argued that the government should be  
18 held to the victims that testified at trial; however, I  
19 understand, and I put in my subsequent submission that, given  
20 the preponderance standard, let's look and see where there is  
21 any actual proof.

22                  Because the government's an conclusions and the work  
23 that they did, as numerically correct or accurate as they may  
24 be, still require the initial supposition that the crime was  
25 committed with respect to all of these people. And that is, if

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1 you were to just say only the inducement and nothing else and  
2 forget about the services that were rendered and the  
3 modifications which were had, and I think that that was your  
4 question initially.

5 If you take the people interviewed, and we've got  
6 those interviews, some of them are not bad interviews, but if  
7 you take all of the interviews, if you take 80-plus people and  
8 the testimony of the victims at trial, and then you take the  
9 commensurate amount that was paid by those people, at least you  
10 have some evidence upon which you can rely. But quite frankly,  
11 I think you first need to get past the issue of whether or not  
12 the extrapolation process is even called for in this case.

13 I mean, an extrapolation, obviously, under Shonubi and  
14 all of the cases that we've looked at, basically, it's a way  
15 that this Court does not allow a defendant, for example, to get  
16 away with something because it's such a huge and impossible  
17 universe to look at, that you cannot discern what the actual  
18 damage is. That's not what this case is. And I'm not saying  
19 that it wouldn't be burdensome, but there are so many factual  
20 issues here, so many other possibilities, that this is not a  
21 case for which an extrapolation should be applied.

22 This is a case for which the Court should look at the  
23 trial testimony, should look at those victims, which we've  
24 acknowledged and accepted, and then look at the other  
25 interviews, and you make your determination whether they

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1 satisfy the preponderance standard. There is no evidence,  
2 there is no evidence, other than the government's supposition  
3 here, that every single person that hired AHR did so having  
4 been fraudulently induced. There isn't. You can say that  
5 because it happened in these cases, it automatically happened  
6 in those cases. It's not how we enhance punishment.

7 Now, granted, punishment can be enhanced under the  
8 guidelines, the advisory guidelines from a preponderance  
9 standpoint, but this is inappropriate in this case. Your  
10 question is clearly a good question about the people who  
11 received modifications. And I will say that I find it rather  
12 interesting that the ACT records are good enough for the  
13 government to rely in arguing to you that you should enhance  
14 the sentence, but perhaps they're not good for other reasons.

15 We've given them to you. The fact remains is that in  
16 my latest submission, you've got close to 60 to 65 people which  
17 don't count IRA, which is the agency that Khafizov hired to  
18 finish these files, well over 60 people that received  
19 modifications or received repayment plans. There's no reason  
20 to not believe that.

21 The other thing that you have to look at, because the  
22 government keeps talking about witnesses. The witness upon  
23 whom they relied in large part is David Cassuto. Now, the  
24 other thing the ACT records also show, Judge, is that --  
25 putting aside just for a minute the inducement, and I know that

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1 that's hard for you to put aside, and I know that, I recognize  
2 that. You look at these reports, and you have got a company  
3 that was hounding people for documents. You've got a company  
4 that is calling banks, being put off by banks, being told that  
5 banks lost the file, still staying with it, hounding people.

6 The government talks about, and puts at this fellow's  
7 shoulders -- there's pain to be put at this fellow's shoulders,  
8 don't get me wrong, but everybody's financial distress and pain  
9 in this case is his fault. There are people who are being  
10 hounded for documents, who then receive foreclosure notices,  
11 then called AHR and said what's going on? And AHR looks at  
12 them and says, of course you got a foreclosure notice. We've  
13 been asking you for these documents for months.

14 So much has been made of the fact that Mr. Khafizov --  
15 and it was in the government's initial sentencing memorandum --  
16 you're not getting a modification unless your loan is late.  
17 We've given you example after example about clients who would  
18 call and banks who would say, we can't help them unless they're  
19 behind. This entire industry was a mess.

20 And you know, Judge, from your time, that you had  
21 victims, what are they going to say? I love AHR? That's why  
22 we have trials. That's why witnesses testify. I get it that  
23 it's a preponderance standard for the people who were  
24 interviewed. I've got no reason to think that the agents in  
25 this case lied in their reports, but at least you have some

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1 evidence that you can rely on and say, if you so decide that by  
2 a preponderance of the evidence, I'm going to find you had 80  
3 to 90 victims, by a preponderance of evidence, I'm going to  
4 find that the money that those victims paid qualifies.

5 But the government says people didn't get refunds. A  
6 lot of people got refunds. We have some names here. The  
7 government says nobody got modifications. Upon what do they  
8 rely? On David Cassuto? You know, I tried to walk a fine line  
9 in my submission in this case, and I hope I didn't cross it  
10 with you because I am not, in any way -- and this is a  
11 defendant, who got convicted after trial, and you don't have  
12 this very often. He is not minimizing his culpability. He is  
13 not telling you he's not sorry.

14 But the notion that we're going to believe a man who  
15 takes the stand and says that this company, from the minute  
16 they walk through the doors of this Manhattan office, that  
17 they're paying all of this rent for, was nothing but a sham, in  
18 the face of these records that show all of the time and effort  
19 put in? What I said in my initial memo, Judge, was that it was  
20 an industry, and it's this industry, it's the mortgage  
21 industry, it's the stock industry, and it's all bad, and we get  
22 it, where you overpromise but then you try to deliver because  
23 you want to succeed in your business. And that's really what  
24 happened here.

25 But the notion that they're simply going to say that

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1 because these people say that they were lied to about certain  
2 things, the entire universe of clients -- I heard the word  
3 "approximately" and "maybe" how many times? It's not how we  
4 take sentences and enhance them by point after point after  
5 point. So if the Court is inclined to accept the fact of an  
6 extrapolation being appropriate here, I think that where you  
7 were kind of dividing it is appropriate.

8 And in terms of a preponderance standpoint, you've got  
9 three leaps here. The government says, take the trial  
10 witnesses, then take the witnesses that were interviewed, then  
11 let's just put the whole ball of wax in and say it happened  
12 with everybody. That's what happened in Uddin, which was cited  
13 by the government in their submission, and the Court in Uddin  
14 said you can't do that. Let's look at what you have some  
15 evidence of. And quite frankly, as I put in my submission, I  
16 think the showing in Uddin at a Fatico hearing with witnesses  
17 testifying, was far more compelling than simply saying we took  
18 bank records, we know this many people paid, we know this is  
19 how much they paid, and now we're telling you, Judge, assume  
20 that not a minority but a vast majority, or not a vast  
21 majority, but a good amount of the people that puts us over the  
22 edge of these guidelines, you should simply speculate had the  
23 same thing happen to them that everybody else.

24 So with all due respect, I think that if you're  
25 looking at it from a preponderance standpoint, I think that the

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1 Court's comments were on, and if you were to find that the  
2 interviews that were conducted suffice, then what I would  
3 respectfully submit is it is 50 -- it's over 50, not 80. It's  
4 over 50 in order for a four-level enhancement, and that it's a  
5 12-level enhancement on the money that the people that  
6 testified at trial, as well as the people interviewed, were  
7 counted.

8 THE COURT: Yes.

9 MR. VELAMOOR: Briefly. First of all, with  
10 Mr. Cassuto, Mr. Kousouros didn't believe him, the jury  
11 believed him because they convicted the defendant of  
12 conspiracy. As Mr. Kousouros pointed out at length, the only  
13 witness for a conspiracy was Mr. Cassuto, the defendant was  
14 convicted of participating in the conspiracy. So in any event,  
15 Mr. Cassuto's testimony should be believed, but more  
16 importantly, we're not asking the Court to extrapolate.

17 Extrapolate would be the government presents you with,  
18 you know, \$50,000 of losses with respect to ten people, and  
19 then ask you to estimate going forward how much it would be for  
20 a bunch of other people. We're not asking the Court to do that  
21 in this case. We've identified specific losses for specific  
22 people. And, again, there is specific evidence, not the  
23 government's supposition but specific evidence, that these  
24 people were induced through fraud, testimony at trial, that the  
25 government didn't make up, about the fact that this was a

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1 follow up to a fraudulent business, that they knew it in  
2 advance that they weren't going to give refunds. That was  
3 testimony at trial. This is not just something I'm just saying  
4 from this table.

5 There was mailers that went out on a mass basis that  
6 went to as many disadvantaged homeowners as possible. This is  
7 not something the government made up. This was a document that  
8 was produced and provided in evidence. Scripts containing  
9 false statements, testimony that those scripts were to be  
10 followed by people calling customers. Again, this is not  
11 something that the government is making up. This is evidence  
12 that was offered at trial, and this evidence shows that when  
13 these people became customers of AHR, they became customers of  
14 AHR through fraud.

15 We're not asking the Court, even despite all that  
16 evidence, which I think is far beyond preponderance, the Court  
17 doesn't even need to find that every customer of AHR was  
18 induced through fraud to be a victim. The Court only needs to  
19 find a fraction of the people, additional individuals who have  
20 been identified, beyond those who were in it in order to find  
21 the 250-victim threshold.

22 And in terms of losses, the Court has specific losses  
23 attributable to specific people, backed up by bank records, but  
24 again, the government did not make up, confirming that these  
25 people paid well more than 700,000, let alone more than

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1 400,000. So we think that there's, you know, more than  
2 sufficient evidence to meet the government's burden of  
3 establishing 250 victims and 400,000 in losses.

4 THE COURT: Mr. Kousouros, did you want to be heard  
5 further with regard to the other adjustments enhancement?

6 MR. KOUSOUROS: The vulnerable victims?

7 THE COURT: Yes.

8 MR. KOUSOUROS: Judge, we will rely on our  
9 submissions. The only thing I would point out is that, in  
10 reviewing the materials that we had previously submitted, you  
11 know, it's almost counter-intuitive because of the dictionary  
12 definition of the term, and that's kind of troubling because  
13 you look at people who are having trouble paying their  
14 mortgage, and so I suppose you automatically say, well, they're  
15 vulnerable.

16 And our only point is that we certainly acknowledge  
17 that they are victims of this offense. It is our belief that,  
18 based on Second Circuit case law, when you look at the Box case  
19 and the bail bondsmen, you look at the Sutherland case with the  
20 memorabilia, and these were elderly people, you look at the  
21 Stoffer case, when you're targeting parents who want to adopt  
22 children, and they're not found to be vulnerable. I think it  
23 simply gives more voice and meaning to the particularly  
24 vulnerable, susceptible language in the guidelines.

25 So while we certainly understand that they're victims

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1 that we believe that the enhancement is designed for those for  
2 whom a far more particular and established vulnerability would  
3 attach.

4 THE COURT: Did you want to be heard any further with  
5 regard to the enhancement for being an organizer and leader of  
6 criminal activity?

7 MR. KOUSOUROS: Judge, we've looked at the guideline,  
8 and we do not believe that there's a viable argument on that  
9 adjustment.

10 THE COURT: Mr. Velamoor, do you want to be heard on  
11 those two?

12 MR. VELAMOOR: Just briefly, on the vulnerable victims  
13 point. Again, I find it somewhat remarkable that the defendant  
14 can cite Second Circuit law when the defendant has not  
15 addressed the Second Circuit law that we cited in our papers,  
16 which make it clear that financial vulnerability qualifies,  
17 under the vulnerable victim enhancement, the Borst case and the  
18 Harris case.

19 I believe Borris applied that enhancement in the  
20 context of customers of a similar mortgage business and found  
21 that people who are in financial trouble are vulnerable to  
22 schemes like this. So I think the Second Circuit case law, I  
23 think, is clear that the vulnerable victim enhancement applies  
24 to people in financial distress who were victimized in a scheme  
25 like this.

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1                   The Court was present at the trial. Some time has  
2 passed, but the Court was present at the trial, and saw these  
3 people and they were clearly vulnerable victims.

4                   The second point about vulnerable victims, another  
5 argument that the defendant is not addressing is this whole  
6 point about reloading. The Second Circuit law is also clear  
7 that even if the person is not a vulnerable victim the first  
8 time, when the defendant hits them up again for multiple  
9 payments, that itself, by itself, qualifies for this  
10 enhancement.

11                  And that was some of the most powerful and, in many  
12 ways, troubling evidence at this trial, where the defendant  
13 would in his business, would take money from these people  
14 initially, sit on their applications. And then when they got  
15 desperate and called him, knowing that they were desperate,  
16 hearing the desperation from them, he would then craft a new  
17 lie saying, you know, if you give me some more money, it will  
18 go to the mortgage lender, it won't go to me. And they gave  
19 him the money, and he used it for his car and his other  
20 personal expenses.

21                  But that whole aspect about reloading is an entirely  
22 separate basis for the vulnerable victim enhancement that  
23 equally applies here, and it applies very powerfully on the  
24 facts of this case.

25                  THE COURT: With regard to the guideline range, I do

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1 believe adjustment in the guideline range is appropriate. I'll  
2 start backwards. With regard to the adjustment for the role  
3 adjustment, I think the role adjustment is appropriate and was  
4 clearly supported here. I think, regardless of how one wants  
5 to assess, you know, how the scheme began, who was involved in  
6 it at the beginning, it's clear that for a substantial portion  
7 of this criminal activity, that Mr. Khafizov acted as the main  
8 person who was running these companies and this activity and  
9 directed the activity of a number of people. I think the role  
10 adjustment is appropriate.

11 I think that the volume of work that they were doing  
12 clearly required supervision, and the number of people which  
13 the evidence indicated and required a particular enhanced role  
14 for Mr. Khafizov to be the organizer and leader in order to  
15 make sure that the scheme pretended to be profitable and avoid  
16 the scrutiny of law enforcement. So I think that that  
17 enhancement, particularly given the significant role and very  
18 little evidence, no evidence throughout most of this period  
19 that there was anyone else who was a person who was in charge.

20 I think the defendant has already acknowledged that,  
21 at some point, the others fell out of this activity, and he was  
22 basically left to run what was a sophisticated criminal scheme,  
23 which required assistance of others to process and collect fees  
24 and to engage in the activity to keep this criminal activity  
25 profitable and ongoing. So I think that that's an appropriate

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1 enhancement.

2                   With regard to the vulnerable victims enhancement, I  
3 think that is also clearly appropriate. In this case, not only  
4 what I would describe the victims, particularly the victims  
5 that testified at trial, not only will I describe as  
6 financially vulnerable, I would have to describe many of them,  
7 if not most of them, as desperate. They were, obviously,  
8 individuals who were had no other recourse because of their  
9 financial situation, other situations where they just had no  
10 ability to save their homes.

11                   They reached out to Mr. Khafizov and his companies,  
12 based on their promises, to solve what, for most of these  
13 people was the most serious problems that they had ever  
14 encountered in their lives, and with the most serious  
15 consequences that they ever confronted in their lives, being  
16 thrown out of their homes and losing whatever investment they  
17 thought they were originally making and in desperate straits,  
18 to try to figure out how they could save their homes or even  
19 locate another place to live.

20                   And I think the evidence in this case was clearly  
21 significant to demonstrate that many of these victims were  
22 desperately seeking help from Mr. Khafizov and from his company  
23 because they just could see no way out of the most serious  
24 problems that they ever had, some of them. So I think that  
25 that's an appropriate enhancement.

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1           With regard to the loss amount and the number of  
2 victims, I'm going to stick with my calculation. I'm totally  
3 confident, without making any further calculation of the  
4 numbers that are, obviously, supported by both the testimony of  
5 witnesses and interview of the victims, I think that that  
6 clearly indicates victims way over 50, and I would say that  
7 clearly at least somewhere in the 200 and very possibly  
8 significantly greater than that, but I think on this record, I  
9 think that it is sufficient and the record is clear and strong  
10 that at least these numbers were clearly demonstrated by  
11 interviews and/or the witnesses.

12           And I think that the numbers in excess of 200 are  
13 clearly demonstrated, but I am not going to go beyond that to  
14 make an assessment of whether each person who was a customer  
15 was, in fact, quote, a victim and whether or not, in fact, they  
16 suffered a loss or received any particular benefit from their  
17 contact with this company and Mr. Khafizov.

18           Also, with regard to the loss amount, I think the loss  
19 amount is clearly way over 200,000. I think that it's possibly  
20 as high or higher than the government has indicated, based on  
21 their calculations, but I think the record, as I say, is clear  
22 here that, at least corresponding with the number of victims,  
23 that I think the evidence clearly shows there were at least  
24 references to Khafizov's criminal conduct consistent with those  
25 numbers.

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1           I think, you know, some number that reflects those  
2 numbers of victims is appropriate, and I think that number is  
3 over \$200,000 and it's probably at least closer to the  
4 \$400,000, and as I say, very possibly, based on the  
5 government's reasonable calculations, significantly higher than  
6 that. But I think it's consistent with the determination of  
7 the lay witnesses and with the interviews of victims and the  
8 documents that were clearly expended and the loss amount that  
9 correspond to those numbers, I will make that adjustment in the  
10 guideline range.

11           That being said, that would be, as it's indicated, the  
12 12-point adjustment for loss amount instead of a 14-point  
13 adjustment, a four-point adjustment for number of victims  
14 instead of a six-point adjustment.

15           The government has conceded that they are withdrawing  
16 and not going to seek an adjustment for misrepresentation of a  
17 transaction enacted on behalf of a government entity, for abuse  
18 of position of trust. Each of those were two-point  
19 enhancements, and so that would be adjusted.

20           So given that, that would be an eight-point adjustment  
21 to the guideline range, taking the offense level from a level  
22 37 to a level 29, for a guideline range of 87 to 108 months. I  
23 think that that is commensurate with the nature of this  
24 offense, and that it does not overstate the conduct that was  
25 proven at trial. So that, I'm going to adjust the guideline

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1 range to that number.

2                   And let's go to the sentence. Does the government  
3 wish to be heard first on the sentence?

4                   MS. FRIEDLANDER: Yes, your Honor. Thank you.

5                   THE COURT: Yes, Miss Friedlander.

6                   MS. FRIEDLANDER: The Court heard the trial evidence  
7 and has read our sentencing submission, and so I will be brief.  
8 I just want to make a few points. The defense keeps asking you  
9 to compare Mr. Khafizov to insider trading defendants. Just  
10 two quick points on that. First, the Court, of course,  
11 considers all the facts and circumstances of the case.

12                  Your Honor knows the evidence in this case  
13 particularly well because the Court sat through a two-week long  
14 trial, and so I think you hardly need me to tell you that this  
15 defendant is not like an insider trading defendant in many ways  
16 especially because this defendant preyed on people in a very  
17 personal way. The more victims trusted him, the more he came  
18 back to them. He came back to them for more money by telling  
19 them more lies.

20                  You remember Mary Lou Perez, who testified at this  
21 trial. She was the nurse in the neonatal ICU at St. Barnabas  
22 Hospital in the Bronx. She called him when she got default  
23 notices, foreclosure notices. Isaac Khafizov told her just  
24 ignore them, and then he used the opportunity to trick her into  
25 paying more money. She got a summons to go to court with

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1 respect to her foreclosure. She called him frantically. He  
2 told her not to go to court. Again, he used the opportunity to  
3 trick her into paying him more money. That is not what insider  
4 trader defendants do. That is not what JP Morgan did when it  
5 failed to deal with Bernie Madoff.

6 The fact that this defendant preyed on struggling and  
7 vulnerable people is an important factor, in the government's  
8 view, for the Court to consider in sentencing this defendant.

9 Mr. Kousouros, a few moments ago, said that this was  
10 just a fraud where the defendant overpromised and  
11 under-delivered, and I have to confess, I wondered if we sat  
12 through the same trial when he said that. As the Court will  
13 recall, after American Home Recovery collapsed, after Isaac  
14 Khafizov parted ways with the Cassuto brothers, Isaac Khafizov  
15 ramped up his fraud.

16 Overpromised and under-delivered? Isaac Khafizov  
17 stole money outside from Bob McCarthy's bank account. Isaac  
18 Khafizov told Pankaj Singh that he needed an upfront fee of  
19 nearly \$1,300 for appraisal costs. That was just false. Isaac  
20 Khafizov told Charles Decker that he was on the phone with  
21 Mr. Decker's bank, and that the bank had approved the  
22 modification and just needed an extra \$2,000, which Isaac  
23 Khafizov would gladly forward onto the bank if Mr. Decker would  
24 send it to him, and Mr. Decker did that. And that was a total  
25 lie.

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1           Isaac Khafizov promised victim after victim that he  
2 was doing things on their behalf that were just lies, and he  
3 did it all to get more money from them. And as the Court will  
4 recall, he used that money to pay off his Mercedes and to drive  
5 his fancy Cadillac Escalade. And he committed this crime, in  
6 sum, just out of pure greed. So I think the Court should  
7 reject the argument that this is just a fraud where the  
8 defendant overpromised and under-delivered. Thank you.

9           THE COURT: Mr. Kousouros?

10           MR. KOUSOUROS: What I said was that in this industry  
11 and several other industries, the advertising pitches were to  
12 overpromise and then try to deliver, try to come through in  
13 order for the businesses to come through. I was at the same  
14 trial, and it was as troubling for me in many ways, Judge, and  
15 for many reasons.

16           You do need to think about Mary Lou Perez. You do  
17 need to think about the witnesses that testified. That's part  
18 of why we're here. And, you know, we've talked about the  
19 guidelines and all of these numerical calculations, and now,  
20 you also need to think about who this young fellow is. We're  
21 not talking about, you know, discounting a fine. We're not  
22 talking about small numbers here. There will be punishment in  
23 this case.

24           You will consider the victims. You will consider the  
25 offense, and oftentimes the government wants you to only

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1 consider that. But that's not what we're here for. We have  
2 not asked you for a pass. We've asked you for what is  
3 sufficient but not greater than necessary.

4 These comparisons, they're insulting. JP Morgan looks  
5 away at what Madoff does. Madoff cripples people with a  
6 \$100 billion loss. JP Morgan and its executives get a deferred  
7 prosecution. If they prosecuted that case in front of this  
8 honorable Court, oh, my goodness, would you be hearing about  
9 those poor victims. If they prosecuted insider trading case  
10 before this honorable Court, oh, my goodness, would you be  
11 hearing about the havoc upon the little guy.

12 But we've cited other cases. But, guess what? He did  
13 wrong, and we want you to consider that. But to speak from one  
14 side in one case and then ask for a 13-year sentence or an  
15 11-year sentence for a kid who's good at his core but just went  
16 bad for a year, for whatever reasons, and then to say that's  
17 not an insider trading case, that's not right either.

18 Now, I will also say, Judge, I was looking at 17-year  
19 guidelines when I sent you that list. So I understand that the  
20 numbers have gone down, but to say that other people aren't  
21 victimized in those cases, it's wrong, and you'll never hear it  
22 if you're presiding over those cases. That was my only point  
23 in sending it to you, and again, I had 17-year guidelines,  
24 which really scared me because that happens to be a human  
25 being, as are the victims. Don't ever let anything I say to

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1 you signify that you shouldn't be thinking about them and,  
2 believe me, I know you will.

3 I'm the only person that's going to talk to you,  
4 besides him, that has spent any time with him, that knows more  
5 than just the numbers. And I'm going to do my best here, and I  
6 want you to ask for any information you need because I really  
7 need to know that I'm telling you everything you need to know,  
8 because this is the only time that he really gets to at least  
9 present who he was and who he is and who he can be so you can  
10 figure out what we, as a society, need to take with him, and  
11 you need to take something from him.

12 He was a good kid. His family brought him here at age  
13 five from Russia to flee from persecution, and they raised him  
14 right, and he should be ashamed of himself, and he gets it.  
15 His mother and father are here, and they were here every day at  
16 trial. He worked from 14 years old with his dad, who's a  
17 haircutter, and he was selling the lotions and the shampoos in  
18 that place when he was in college when the Cassutos came and  
19 said, What are you doing this for? He took the bait. He'll  
20 pay for it. He's been paying for it, but he was a good kid.

21 He helped his family. He went to school, never did  
22 anything, never ran afoul of the law. He's what we want when  
23 we raise our kids. And so he got driven around in the  
24 expensive cars that, Ms. Friedlander is right, he was an idiot  
25 and went and bought for himself. We get all of that, but kids

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1 make mistakes. They go the wrong way, and then they get  
2 carried away. And guess what? They pay. But he was a good  
3 kid.

4 And aren't we trying to figure out what a defendant is  
5 at his core? Because isn't that what is at least going to tell  
6 us how much time you need to give him, and what's going to come  
7 of him when he gets out because it's the core we hope reemerges  
8 in an individual? That's what he was. And he was 20, or 18,  
9 he was young. He wasn't a bad guy his whole life. He wasn't  
10 some criminal who we just know is going to do it again. He was  
11 a good kid.

12 He started making money with these guys. And what did  
13 he do with the money? His father was in financial distress.  
14 He helped him. He helped his parents buy a house. You know,  
15 this is an important thing. You did not hear one shred of  
16 evidence about what this guy did when he was making a lot of  
17 money. His car, his houses, he didn't have any of that when he  
18 was working in the mortgage industry.

19 He became more of a moron when he entered the  
20 modification industry, when he wasn't making any money. His  
21 company went broke, but he helped his parents buy a house, a  
22 house they lost to foreclosure. He helped his brother. He  
23 tried to get his father out of debt. He paid a lot of his  
24 debt. You didn't hear of him squandering money on his own  
25 stuff before this. He was a good kid. And now he's a broken

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1 man. And he can emerge with his core.

2 You know, I don't even know if I can get through the  
3 next part of this because it just, it cripples me. That's his  
4 wife. And it's sad because he loves her to no end, and he's  
5 losing her. And through all the trial prep, I can't tell you  
6 what they went through. She was pregnant, coming to the office  
7 every day, out to here. You remember we started -- we were  
8 going to start the trial. The two weeks before, they find out  
9 the baby is not going to survive, and it's a horrendous  
10 procedure.

11 He's known her since he's 12. Is that why maybe he  
12 didn't listen and went to trial? I don't know. And now  
13 they're falling apart. He's absolutely crushed, and still, he  
14 takes classes in jail. He does what he can. He does  
15 everything he can to better himself, and he does. He's  
16 punished.

17 It is a sad case because this is a guy, he's a young  
18 guy, who didn't need to go wrong. And if he didn't, he'd be  
19 successful because he does have the gift of gab when he's got  
20 the fortitude and the confidence to talk. And it's a shame.

21 So I do respectfully urge you, as I know you will, to  
22 consider the victims, and some of it was really sad. I'm also  
23 going to ask you to, and I know you will. He's not responsible  
24 for all of their distress. Many of them put themselves in a  
25 bad place. He didn't need to be there.

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1                   But, Judge, I'm asking you, as well, to consider who  
2 he was. You've heard nothing to the contrary and know that has  
3 been going on, you know, for four years. It's taken a chunk of  
4 his life, and to just, hopefully, get from it that when he  
5 reemerges, and he will, what is inside him will come back out.  
6 This is not a bad guy that we need to be scared of, and I am  
7 telling you this is not a bad guy that we'll worry is ever  
8 going to crush himself again in terms of recidivism.

9                   Part of this was to talk to you about all the letters  
10 you got. I'm not going to do that. They speak for themselves.  
11 They say what I think I've hoped to convince you and that is,  
12 he was a good kid. Even while going through this, this young  
13 fellow over here had some real issues, and even while he was  
14 going through all this, he helped him through it. And this  
15 young fellow credits Isaac with that help. So I did get  
16 through it.

17                   I can't imagine this is an easy task. I'm asking you,  
18 respectfully, to take your new guidelines which, believe me,  
19 I'm very grateful for, the old ones were terrifying, and to  
20 sentence him accordingly, based on what he did, who he did it  
21 to, balanced with who he was and who he can be. Thank you,  
22 Judge.

23                   THE COURT: Yes, Ms. Friedlander?

24                   MS. FRIEDLANDER: May I be heard just briefly on one  
25 point, your Honor?

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1 THE COURT: Yes.

2 MS. FRIEDLANDER: Mr. Kousouros described the  
3 defendant as a great kid and said that the Court didn't hear  
4 any evidence that he had engaged in any other bad conduct prior  
5 to the time he engaged in this scheme. We had evidence that  
6 Mr. Khafizov engaged in mortgage fraud for years before he  
7 started engaging in this scheme, and just to remind the Court,  
8 we moved in limine to admit that evidence at trial. The Court,  
9 for a number of reasons, precluded it, but certainly we do not  
10 agree that this was a defendant who had not engaged in prior  
11 criminal activity.

12 We're not asking for a Fatico hearing on this issue,  
13 and we're not asking the Court to take our word, you know, to  
14 consider what we're telling you in determining the sentence. I  
15 simply want to state for the record that we disagree with what  
16 Mr. Kousouros said, and we don't think that there is a basis  
17 for the Court to conclude, simply based on Mr. Kousouros'  
18 assertion, that this defendant has not previously engaged in  
19 criminal activity.

20 THE COURT: The only question I had, Mr. Kousouros,  
21 did you want to be heard any further at sidebar?

22 MR. KOUSOUROS: Yes.

23 THE COURT: Why don't you come up here.

24 MR. KOUSOUROS: Thank you, Judge.

25 (Pages 40 - 48 SEALED by order of the Court)

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1 (In open court)

2 THE COURT: Mr. Khafizov, is there anything you want  
3 to say before I impose sentence?

4 THE DEFENDANT: Yes, sir. Your Honor, thank you so  
5 much for giving me a chance to speak. I really want to talk  
6 from my heart. I don't have much prepared, but I just want to  
7 say that I'm not a bad person. I wasn't raised in a bad house.  
8 I was not raised -- I was raised with morals. I was raised by  
9 doing the right thing in my life, going to school and always  
10 tried to be successful and tried to do the right thing for  
11 people. I always tried my best to do the right thing for  
12 everybody.

13 I've always worked since I was a teenager, to help my  
14 parents. You know, the year that we came here, they were short  
15 on finances; so I tried to do as much as I can to help them. I  
16 wanted to go to school. I started college. I was going to go  
17 to law school. And when I was around 18 years old,  
18 unfortunately, I meet these two guys that were twice my age and  
19 promised me the world, told me things that, you know, I'll be  
20 able to help my family, to help my parents, show me a better  
21 life, a life that I never had.

22 So I -- you know, I listened to what they had to say,  
23 and I tried to make the right decision, but that was really the  
24 worst decision of my life. They showed me a totally different  
25 type of lifestyle with nice cars and houses and told me that

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1 all that could be mine. You know, I took them up on their  
2 offer. It was really the worst mistake of my life.

3 I had nothing but regret so much. My family suffered  
4 so much. People suffered so much. These victims suffered. My  
5 wife has suffered so much. All I ever wanted was to have a  
6 better life, a family, and married to my wife, to always have  
7 children, raise them right. I wanted to get married to the  
8 girl I loved all my life, since 12 years old. The next  
9 morning, I got arrested by federal agents, right in front of  
10 her. I didn't know what to say or do.

11 It has been the hardest thing for me ever since. When  
12 I found out she was pregnant, it was the best day of my life.  
13 It was so hard to go through everything. When I found out that  
14 the baby was sick, I didn't know what to do or what to say. I  
15 just remember sitting at night, holding her, trying to tell her  
16 that everything was going to be okay, but not knowing what to  
17 say. Two weeks before the trial, we were in the hospital and  
18 the doctor said the baby is not going to make it; so we had to  
19 get a termination done. The baby had a heart problem. Sorry.  
20 I'm sorry.

21 I'm so sorry for everything. I'm so sorry to  
22 everybody, the victims, my family, my wife. I'm losing the  
23 best thing that ever happened to me too. I hope -- I hope that  
24 I could go back out and show everybody that I'm a good person.  
25 I'm not a bad person. I'm really not. I'm not. I'm sorry.

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1 Sorry. Thank you so much.

2 THE COURT: I've reviewed the presentence report. I  
3 accept the factual recitations in the presentence report, and  
4 I've adjusted the guideline range to a total offense level of  
5 29, a criminal history category I. I have considered the  
6 submissions on behalf of the defendant and the government and  
7 the arguments made by both sides with regard to sentence,  
8 considering all the factors in 18 U.S.C. 3553(a) relevant to  
9 sentence.

10 In this case, I sat through a trial which indicated  
11 that there were, as we've already discussed, desperate people  
12 who were looking for someone to assist them in their lives to  
13 better their situation that they had no ability themselves to  
14 resolve. They reached out to this defendant. This defendant  
15 took advantage of every one of those individuals. He showed a  
16 callous disregard for the consequences of his criminal conduct  
17 on the victims he swindled. And even up through the trial,  
18 this defendant demonstrated no acceptance of responsibility  
19 until after he was not able to avoid conviction at that trial.

20 I've considered all of the other issues in mitigation,  
21 those issues and a consideration of all the factors have  
22 convinced me not to go above the guideline range. Quite  
23 frankly, I think it would be appropriate to go above the  
24 guideline range. I think this was a most serious crime, with  
25 numerous victims who suffered severely and dearly as a result

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1 of the defendant's own decision to put his interests in front  
2 of theirs.

3           But I've decided not to go above the guideline range  
4 in this case because I believe a sentence within the guideline  
5 range, with a sentence at the top of the guideline range, is an  
6 appropriate sentence in this case, given the serious nature of  
7 the crime involved here and the serious consequences to  
8 numerous victims.

9           I am going to impose a sentence of 108 months. I'm  
10 going to impose three years of supervised release. I'm going  
11 to impose a \$100 special assessment. This sentence is imposed  
12 on Counts One through Four, to run concurrently with each  
13 other.

14           I will order restitution. I'm going to order  
15 restitution in the amount of just under \$400,000 in this case,  
16 given the acceptance of the loss amount was within that range  
17 and the number of victims that were actually determined, and my  
18 assessment that we'd be lucky if that amount of money could be  
19 recovered from this defendant and distributed to victims. Any  
20 greater amount is unreasonable to expect that it is possible to  
21 recover that amount for the victims to this case. The money to  
22 be distributed to the victims on the basis that the government  
23 believes is appropriate, given the identification of the  
24 available names.

25           The mandatory conditions of supervised release are

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1 imposed. The defendant shall not commit another federal, state  
2 or local crime. The defendant shall not illegally possess a  
3 controlled substance. The defendant shall not possess a  
4 firearm or destructive device. The defendant shall cooperate  
5 in the collection of any DNA as directed by the probation  
6 officer.

7 The standard conditions of supervision one through 13,  
8 as recommended by the presentence report, are also imposed.  
9 The special condition, the defendant shall provide the  
10 probation officer with access to any requested financial  
11 information and shall not incur any new credit card charges or  
12 open any additional lines of credit without the approval of the  
13 probation officer unless the defendant is in compliance with  
14 the installment payment schedule.

15 The defendant shall also participate in a drug or  
16 alcohol program approved by the probation office, which program  
17 may include testing to determine whether the defendant has  
18 reverted to the use or abuse of drugs or alcohol.

19 The defendant is to report to the nearest probation  
20 office within 72 hours of his release from custody. The  
21 restitution shall be made beginning 30 days after the defendant  
22 is released from custody. It shall be made in payments, in  
23 monthly installments of at least 20 percent of the defendant's  
24 gross monthly income over the period of supervision and to  
25 commence 30 days after his release from custody, or any other

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1 schedule set by probation commensurate with his ability to pay  
2 and the availability of funds.

3 Defendant shall notify the United States Attorney for  
4 this district within 30 days of any change of mailing address  
5 or residence address that occurs while any portion of the  
6 restitution remains unpaid.

7 Mr. Khafizov, you have a right to appeal this  
8 conviction of sentence. If you wish to appeal any portion of  
9 this conviction of sentence, you should discuss it immediately  
10 with your attorney in order to preserve your right to appeal.  
11 A notice of appeal must be filed on your behalf within 14 days  
12 of entry of today's judgment.

13 Is there anything further by the government?

14 MR. VELAMOOR: Just a few housekeeping matters. The  
15 Court indicated that it was ordering restitution in an amount  
16 somewhat less than 400,000. Is the Court willing to set a  
17 specific number, since that's a range that I'm not sure that  
18 might translate to the restitution people.

19 THE COURT: It's going to be one dollar less than.

20 MR. VELAMOOR: In the terms of special assessment, the  
21 Court indicated \$100 special assessment. I believe there were  
22 four counts of conviction.

23 THE COURT: On each count, for a total of \$400.

24 MR. VELAMOOR: There's an underlying indictment, which  
25 the government would move to dismiss.

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1                   THE COURT: That application is granted.

2                   MR. VELAMOOR: And, lastly, with respect to  
3 forfeiture, we'd ask the Court to orally order forfeiture and,  
4 as appropriate, the government will submit an order to the  
5 Court after sharing it with Mr. Kousouros.

6                   THE COURT: And you want an order of forfeiture of the  
7 same amount, or are you going to argue for --

8                   MR. VELAMOOR: Yes. I think it's likely to be the  
9 same amount, while we'll discuss it and share with  
10 Mr. Kousouros and provide it to the Court.

11                  THE COURT: I will order forfeiture in that same  
12 amount. Anything further, Mr. Kousouros?

13                  MR. KOUSOUROS: Your Honor, just two things. We would  
14 ask for a designation close to the New York area, and as in our  
15 submission, your Honor, there were significant issues with  
16 respect to Mr. Khafizov's medicating for quite some time prior  
17 to trial and actually leading up to trial. We would ask that  
18 your Honor recommend the drug program, if he's eligible.

19                  THE COURT: While he's incarcerated?

20                  MR. KOUSOUROS: Yes.

21                  THE COURT: Okay. All right. I have ordered that  
22 during supervised release. I will order that he participate in  
23 the drug program, to the extent that he's, obviously, willing  
24 to participate and be eligible for the program in the facility,  
25 if he wishes. I will recommend that he be housed at a facility

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1       closest to the New York City area.

2            MR. KOUSOUROS: Thank you.

3            THE COURT: That's the sentencing.

4            MR. VELAMOOR: Thank you, your Honor.

5            MS. FRIEDLANDER: Thank you.

6            (Adjourned)

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